

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiff-Applicant, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.	NO. 08-01789 (SMB) SIPA LIQUIDATION (Substantively Consolidated)
In re: BERNARD L. MADOFF, Debtor.	
IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC, Plaintiff, v. FEDERICO CERETTI, ET AL. Defendants.	Adv. Pro. No. 09-1161 (SMB)

SECOND AMENDMENT TO FOURTH CASE MANAGEMENT REPORT

WHEREAS, the operative complaint in this proceeding is the Fourth Amended Complaint filed on March 17, 2014, naming as defendants Federico Ceretti, Carlo Grosso, Kingate Global Fund, Ltd., Kingate Euro Fund, Ltd., Kingate Management Limited, FIM Advisers LLP, FIM Limited, Citi Hedge Fund Services Limited, First Peninsula Trustees Limited, individually and as Trustee of The Ashby Trust, The Ashby Trust, Ashby Investment Services Limited, Alpine Trustees Limited, individually and as Trustee of El Praela Trust, Port of

Hercules Trustees Limited, individually and as Trustee of El Praela Trust, El Praela Trust, El Praela Group Holding Services, Ashby Holdings Services Limited, El Praela Trading Investments Limited, and HSBC Bank Bermuda Limited. (Adv. Pro. ECF No. 100);

WHEREAS, on November 22, 2016, this Court issued its Memorandum Decision dismissing the claims against all defendants in this proceeding (“Non-Fund Defendants”), other than Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd. (Main ECF No. 14495);

WHEREAS, on March 9, 2017, this Court so ordered the Stipulated Final Order Granting Motion to Dismiss the Ninth Count of the Fourth Amended Complaint as against the Non-Fund Defendants, which was a final order and judgment for purposes of appeal. (Adv. Pro. ECF No. 281);

WHEREAS, the litigation continued as against Kingate Global Fund, Ltd. and Kingate Euro Fund, Ltd. (together, the “Kingate Funds”) and pursuant to Federal Rules of Civil Procedure 16 and 26, as incorporated into Federal Rules of Bankruptcy 7016 and 7026, Plaintiff Irving H. Picard (the “Trustee”), as trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-III, and the substantively consolidated estate of Bernard L. Madoff, and the Kingate Funds previously stipulated to the initial Case Management Report entered by this Court (Adv. Pro. ECF No. 227) and certain amendments thereto (Adv. Pro. ECF Nos. 284, 314, 349, 401), including the operative, so ordered Fourth Amendment to Case Management Report (“Fourth CMR”). (Adv. Pro. ECF No. 401);

WHEREAS, on February 25, 2019, the Second Circuit issued its opinion vacating this Court’s November 22, 2016 Judgment and remanding to this Court for further proceedings

consistent with the Opinion. *See In re Picard*, No. 17-2992(L), Main ECF Nos. 1312, 1317 (2d Cir. Feb. 25, 2019) (“Second Circuit Decision”);

WHEREAS, the Non-Fund Defendants filed a Petition for Panel Rehearing and Rehearing *En Banc* on March 11, 2019 under Federal Rule of Appellate Procedure 40 which is currently *sub judice*, and may further pursue their rights with respect to the Second Circuit Decision pursuant to Rule 41;

WHEREAS, on February 27, 2019 counsel for the Kingate Funds and the Trustee conferred and agreed to a short-term extension of the close of fact discovery from February 28, 2019 to March 29, 2019 to provide time to confer following the Second Circuit Decision;

WHEREAS, in light of the continued uncertainty regarding the position of the Non-Fund Defendants concerning the Opinion, and the Trustee’s desire to proceed with discovery of all defendants without prejudice to the rights of any party, the Trustee requested that the Kingate Funds agree to amend the Fourth CMR and schedule case management dates agreeable to all parties in this proceeding; and

WHEREAS, the Kingate Funds and the Trustee are scheduled to proceed with mediation on May 14, 2019, and thereafter as necessary, and counsel for the Kingate Funds and the Trustee have agreed to extend the close of fact discovery to June 30, 2019 to allow the parties to mediate prior to agreeing to schedule any further case management dates.

NOW THEREFORE, it is hereby stipulated and agreed by and between the parties through their respective undersigned counsel, that:

- (a) The March 29, 2019 deadline to close fact discovery shall be extended to June 30, 2019, without prejudice to either party moving to amend and/or replace the Fourth CMR prior to that date;

- (b) No new discovery shall be initiated by the Trustee or the Kingate Funds from February 28, 2019 through and including June 30, 2019, except as otherwise provided by order of this Court;
- (c) The February 28, 2019 deadline for responding to contention interrogatories, as set in paragraph 6(b)(3)(c) of the Fourth CMR, shall be extended to June 30, 2019;
- (d) The April 1, 2019 deadline for serving requests for admission, as set in paragraph 6(c) of the Fourth CMR, shall be extended to June 30, 2019;
- (e) All other discovery and further deadlines provided for in the Fourth CMR shall remain unchanged, subject to any further extensions as agreed by the Trustee and the Kingate Funds or ordered by the Court; and
- (f) The extension of fact discovery will not impact the dates of the currently scheduled mediation.

Dated: March 27, 2019
New York, New York

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LLC and Estate of Bernard L. Madoff*

So Ordered this 27th day of March, 2019.

/s/ STUART M. BERNSTEIN
HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE